

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: 05/17/2022 [X] Consent [] Regular
 [] Ordinance [] Public Hearing
 Department: Fire Rescue
 Submitted By: COUNTY ATTORNEY

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve a Settlement Agreement, inclusive of attorney's fees and costs, in the total amount of \$75,000.00 in the personal injury action styled Luis Hernandez v. Palm Beach County, Case No. 50-2020-CA-007713 (AJ).

Summary: This is a personal injury lawsuit arising from a trip and fall in Boca Raton. Fire Rescue was responding to a residential fire at 20866 Vinesta Circle. While Engine 51 was laying the water supply line, the hose became taut, and swept the Plaintiff, standing directly alongside the roadway, off of his feet, causing him to fall to the ground breaking his shoulder Plaintiff was taken by ambulance to West Boca Medical Center where he was diagnosed with a right shoulder fracture which required immediate shoulder replacement (reverse arthroplasty) surgery. Thereafter, Plaintiff treated with a physical therapist for one year and reached maximum medical improvement with a five percent (5%) impairment as a whole. Countywide (JG)

Background and Justification (or Policy Issues): On November 11, 2019, Plaintiff, Luis Hernandez, a former U.S. Marine and Vietnam Veteran, born 3/5/1946, was a spectator to a fire at a neighbor's residence when a coupling on the 5" supply line hose being laid out by Engine 51 is alleged to have gotten caught on the edge of the backboard compartment in the house bed. In so doing, the hose became taut, and swept the Plaintiff, standing directly alongside the roadway, off of his feet, causing him to fall to the ground breaking his shoulder.

The Plaintiff was taken to West Boca Medical Center where he was diagnosed with a fracture of the right humeral head and Dr. Curtis Kephart, orthopedic surgeon, performed a reverse arthroplasty (a complete shoulder replacement surgery) and oversaw Plaintiff's year of physical therapy thereafter. His total medical bills were \$206,788.17, of which \$183,212.07 went towards the surgery and related hospital bills.

This full and final settlement is warranted based on the County's liability exposure and the injuries sustained by Plaintiff. Therefore, it is recommended that the County approve the Settlement Agreement in the amount of \$75,000.00.

Attachments:

1. Settlement Agreement
2. Release of All Claims
3. Budget Availability Statement

Recommended By: [Signature] Department Director Date

Approved By: [Signature] County Administrator Date 5/10/22

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2022	2023	2024	2025	2026
Capital Expenditures					
Operating Costs	\$75,000				
External Revenues					
Program Income(County)					
In-Kind Match(County)					
NET FISCAL IMPACT	\$75,000				
#ADDITIONAL FTE					
POSITIONS (CUMULATIVE)					

Is Item Included in Current Budget? Yes X No

Does this item include the use of federal funds? Yes No X

Budget Account No:

Fund 5010 Agency 700 Organization 7130 Object 4511

B. Recommended Sources of Funds/Summary of Fiscal Impact:

C. Departmental Fiscal Review:


III. REVIEW COMMENTS:

A. OFMB Fiscal and/or Contract Dev. and Control Comments:

 5/3/22
 OFMB 5/3/22

 5/5/22
 Contract Dev. & Control
5-5-22 TW

B. Legal Sufficiency


 Assistant County Attorney

C. Other Department Review

Department Director

(THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT)

SETTLEMENT AGREEMENT

THIS AGREEMENT made and entered into this ___ day of _____ 2022, by and between PALM BEACH COUNTY (hereinafter referred to as the "COUNTY"), a political subdivision of the State of Florida, and LUIS HERNANDEZ (hereinafter referred to as "HERNANDEZ").

WHEREAS, HERNANDEZ sued the COUNTY in a lawsuit presently styled LUIS HERNANDEZ v. PALM BEACH COUNTY, Case No. 50-2020-CA-007713 (AJ), in the Circuit Court of Palm Beach County, Florida (hereinafter referred to as "Pending Lawsuit"), for damages arising from a trip and fall accident that occurred on or about November 7, 2019 at or near 20866 Vinesta Circle in Boca Raton, Florida (hereinafter referred to as "Accident");

WHEREAS, the COUNTY has denied liability and raised several affirmative defenses to the Accident in the Pending Lawsuit; and

WHEREAS, the parties hereto wish to amicably resolve the Pending Lawsuit without further litigation of the claims made and defenses raised therein.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, the sufficiency of which are hereby acknowledged, the parties agree as follows:

1. The foregoing recitals are true and correct and incorporated herein by reference.

2. Within thirty (30) days after the COUNTY receives a fully executed original of this Settlement Agreement and the Release of All Claims, attached hereto as **Exhibit A**, and subject to final administrative approval, the COUNTY shall pay to HERNANDEZ the amount of **SEVENTY-FIVE THOUSAND AND 00/100 DOLLARS (\$75,000.00)**, by a check made payable to Goldman & Daszkal, P.A. Trust Account f/b/o Luis Hernandez; Tax ID: 65-0224682.

3. Within ten (10) days of receipt of the COUNTY's payment, Alexander Hunt, Esq. and HERNANDEZ shall execute and deliver to the Palm Beach County Attorney's Office the Stipulation for Final Order of Dismissal with Prejudice, in the form of the attached hereto as **Exhibit B**, which, in turn, the Palm Beach County Attorney's Office will file with the Court.

4. Alexander Hunt, Esq. shall not disburse, and HERNANDEZ shall not accept, any proceeds from the settlement check described in Paragraph 2 above unless and until the Release of All Claims has been delivered to the COUNTY and the Stipulation for Final Order of Dismissal with Prejudice has been filed with the Court in the Pending Lawsuit.

5. HERNANDEZ acknowledges and agrees that he is responsible for the payment of any and all medical bills and liens concerning, pertaining, or relating to the Accident and Pending Lawsuit and that the COUNTY shall not be responsible for any portion of said bills or liens. HERNANDEZ, on behalf of herself and any of her officers, agents, employees, heirs, executors, administrators and assigns, further agrees to indemnify, defend, and hold the COUNTY and its

officers, commissioners, agents, elected officials, employees, heirs, executors, administrators and assigns, harmless from and against all suits, actions, proceedings, claims, demands, and damages, including attorney's fees, arising out of or related to any such bills, liens, or claims of lien related to the Accident and/or Pending Lawsuit.

6. Each party shall bear its own attorney's fees and costs.

7. This Settlement Agreement does not constitute an admission of liability by any party. Rather, the COUNTY expressly denies liability, and has entered into this Settlement Agreement in order to buy its peace.

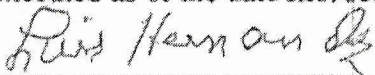
8. In any litigation brought to enforce the terms or remedy a violation of this Settlement Agreement, the prevailing party shall be entitled to an award of reasonable attorney's fees in addition to any other recovery.

9. HERNANDEZ declares and acknowledges that the terms of this Settlement Agreement have been completely read, fully understood, discussed with counsel, and voluntarily accepted as a full and final compromise of any and all claims that she may have against the COUNTY arising out of or relating to the Accident and Pending Lawsuit.


10. This Settlement Agreement shall be binding on the parties hereto, their assigns, transferees, heirs, and other successors in interest.

11. The parties represent that no claim that has been, or could have been, raised in the Pending Lawsuit, and no claim to which this Settlement Agreement applies, has been assigned or otherwise transferred to any other person or entity not a party hereto.

IN WITNESS WHEREOF, the parties have caused this Settlement Agreement to be executed as of the date first set forth above.




LUIS HERNANDEZ
Plaintiff



Patrick Kennedy, Fire Rescue Administrator
Palm Beach County Fire Rescue

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

PALM BEACH COUNTY,
a Political Subdivision of the State of Florida

By: 

Assistant County Attorney

By: _____
Mayor, Board of County Commissioners

ATTEST:
JOSEPH ABRUZZO, Clerk and Comptroller
By: _____

RELEASE OF ALL CLAIMS

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned, **LUIS HERNANDEZ**, being of lawful age and for the sole consideration of **SEVENTY-FIVE THOUSAND AND 00/100 DOLLARS (\$75,000.00)** to the undersigned in hand paid, the receipt and sufficiency whereof is hereby acknowledged, does hereby and for his executors, administrators, successors, and assigns, release, acquit and forever discharge **PALM BEACH COUNTY** (hereinafter "COUNTY"), and their officers, agents, employees, commissioners, heirs, executors, administrators, successors, and assigns (together "Releasees"), none of whom admit any liability to the undersigned, but all of whom expressly deny any such liability, from any and all claims, demands, rights, damages, costs, loss of service, expenses, compensation, actions, causes of action or suits of any kind or nature whatsoever, which the undersigned may now have or which may hereafter accrue or develop, on account of or in any way growing out of any and all known and unknown, foreseen and unforeseen, bodily and personal injuries, and property damages, and any and all consequences thereof, relating to or resulting from an alleged accident that occurred on or about **November 7, 2019** in Palm Beach County, Florida.

FURTHERMORE, the undersigned agrees that each party shall bear its own costs and attorney's fees, and the undersigned shall bear sole responsibility for any and all property damage, hospital, physician, diagnostic, rehabilitation, training, maintenance, medical or pharmaceutical expenses, bills, statements, liens or subrogable interests, of any nature whatsoever, which are or may be outstanding and payable on the date of execution of this Release, or which may be incurred and payable in the future. The undersigned further agrees to indemnify, save, and hold harmless the Releasees from any requests for payment or attempts for collection therefrom. Should legal

action be instituted against the Releasees for payment or collection of the aforementioned claims, the undersigned agrees to indemnify and save harmless the Releasees for any attorney's fees, costs and/or judgments which may be entered against the Releasees with respect to the collection of such claims.

FURTHERMORE, the undersigned agrees to hold harmless and indemnify the COUNTY for any pre-settlement Medicare conditional payments and/or reimbursements demanded or required by the Medicare Secondary Payer Recovery Contractor (MSPRC), CMS, collection agencies, or any other governmental entity, currently known, discovered, or demanded in the future.

FURTHERMORE, the undersigned understands and agrees that this settlement is the compromise of a doubtful and disputed claim, and that the payment made shall not be construed as an admission of liability on the part of the Releasees, and that the Releasees deny any liability therefore and merely intend to avoid further litigation and buy their peace.

FURTHERMORE, the undersigned hereby declares and represents that any injuries sustained may be permanent and progressive and that recovery therefrom is uncertain and indefinite and in making this Release the undersigned understands and agrees that the undersigned relied wholly upon the undersigned's own judgment, belief and knowledge of the nature, extent, effect and duration of any injuries and liability therefore, without reliance upon any statement or representation by the Releasees, or by their representatives or by any physician or surgeon employed by them.

FURTHERMORE, the undersigned states that while he hereby releases any and all claims against the Releasees, and their officers, agents, employees, heirs, executors, administrators,

successors and assigns, for both past and future losses, including medical expenses, health care expenses and related expenses, the necessity for future medical treatment and expenses incurred is speculative and unknown at this time and therefore, as a result, the undersigned reserve the right to pursue and recover all future medical expenses, health care expenses and related expenses, from any person, firm, or organization who may be responsible for payment of such expenses, including any first-party health or automobile insurance coverage, but such reservation specifically does not include the Releasees.

FURTHERMORE, notwithstanding the language contained in this Release, this release shall not be construed as releasing any medical providers for potential claims which may arise based upon treatment and care rendered as a result of the accident which is the subject of this Release. Moreover, this Release shall not be construed as releasing any health insurance carrier or other insurer from medical and lost wage benefits to which the Releasor is entitled.

THE UNDERSIGNED hereby declares that the undersigned has completely read, fully understood and voluntarily accepted the foregoing Release of All Claims for the purpose of making a full and final compromise settlement and adjustment of any and all claims, disputed or otherwise, on account of the injuries and damages set forth above, and for the express purpose of precluding forever any further or additional claims against the Releasees arising out of the aforementioned incident.

THE UNDERSIGNED hereby accepts the tendered settlement draft as final payment of the consideration set forth above.

IN WITNESS HEREOF, I, **LUIS HERNANDEZ**, have hereunto set my hand and seal this

6th day of April 2022.

IN THE PRESENCE OF:

[Signature]
WITNESS SIGNATURE
R. Aldodge
(PRINT WITNESS' NAME)

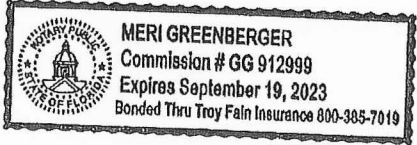
[Signature]
LUIS HERNANDEZ

STATE OF FLORIDA)
COUNTY OF PALM BEACH)

The foregoing document was acknowledged before me by means of [] physical presence or [] online notarization, this 08 day of April, 2022, by Luis Hernandez who is personally known to me or has produced _____ as identification.

[seal]

[Signature]
Notary Public
My commission expires:



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STATEMENT OF ATTORNEY FOR RELEASOR

I, **Alexander Hunt, Esq.**, state that I am the attorney for Plaintiff, **LUIS HERNANDEZ** (hereinafter, "Plaintiff"), the above-signed Releasor; that I have explained to Plaintiff all the terms of this Release and the Settlement Agreement upon which it is based; and that Plaintiff has represented to me that he understands all the terms and their significance. Plaintiff has signed this Release knowingly, voluntarily and on my advice.

DATED this 6th day of April 2022.



Alexander Hunt, Esquire
Florida Bar No.: 50206
Goldman & Daszkal, P.A.
Counsel for Plaintiff
1630 W. Hillsboro Blvd.
Deerfield Beach, FL 33442

ATTACHMENT 3

BUDGET AVAILABILITY STATEMENT RISK MANAGEMENT

REQUEST DATE: 5/3/2022

REQUESTED BY: County Attorney


REQUESTED FOR: Luis Hernandez v. Palm Beach County Board of County Commissioners

REQUESTED AMOUNT: \$75,000

AGENDA DATE: May 17, 2022

BUDGET ACCOUNT NUMBER:

FUND: 5010 DEPT: 700 UNIT: 7130 OBJ: 4511

BAS APPROVED BY: 
Brian Palacios, Fiscal Manager

DATE: 5/3/2022